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LAW DEPARTMENT

NOTIFICATION

The 12th May 2008

No. 5634—I-Legis.-1/2007-L.—The following Acts of Parliament which are assented by the President on the 24th September 2007 and published by the Government of India, Ministry of Law and Justice and Company Affairs (Legislative Department) in the *Gazette of India*, Extraordinary, Part-II, Section-I, dated the 25th September, 2007 is hereby republished for general information.

By order of the Governor

B. K. NAYAK

Principal Secretary to Government

Assented to on the 24th September 2007

THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) AMENDMENT ACT, 2007

(Act No. 38 of 2007)

An Act to amend the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

Be it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows :—

Short title.

1. This Act may be called the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Act, 2007.

Amendment
of Section 7
of Act 34 of
2003.

2. In the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, in Section 7, in sub-section (1), for the words “the specified warning including a pictorial depiction of skull and cross bones and such other warning as may be prescribed”, the words “such specified warning including a pictorial warning as may be prescribed” shall be substituted.

Assented to on the 24th September 2007

THE COMPETITION (AMENDMENT) ACT, 2007

(Act No. 39 of 2007)

An Act to amend the Competition Act, 2002.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows :—

Short title and commencement.

1. (1) This Act may be called the Competition (Amendment) Act, 2007.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of Section 2.

2. In Section 2 of the Competition Act, 2002 (hereinafter referred to as the 12 of 2003. principal Act), after clause (b), the following clause shall be inserted, namely:—

‘(ba) “Appellate Tribunal” means the Competition Appellate Tribunal established under sub-section (1) of Section 53A.’.

Amendment of Section 4.

3. In Section 4 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No enterprise or group shall abuse its dominant position.”;

(ii) in sub-section (2),—

(a) for the words, brackets and figure “under sub-section (1), if an enterprise”, the words, brackets and figure “under sub-section (1), if an enterprise or a group” shall be substituted;

(b) in clause (c), after the word “access”, the words “in any manner” shall be inserted;

(iii) after sub-section (2), in the *Explanation*, after clause (b), the following clause shall be inserted, namely:—

‘(c) “group” shall have the same meaning as assigned to it in clause (b) of the *Explanation* to Section 5.’.

Amendment of Section 5.

4. In Section 5 of the principal Act,—

(i) in clause (a),—

(a) in sub-clause (i), for item (B), the following item shall be substituted, namely:—

“(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million” US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or”;

(b) in sub-clause (ii), for item (B), the following item shall be substituted, namely :—

“(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or”;

(ii) in clause (b),—

(a) in sub-clause (i), for item (B), the following item shall be substituted, namely :—

“(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or”;

(b) in sub-clause (ii), for item (B), the following item shall be substituted, namely :—

“(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or”;

(iii) in clause (c),—

(a) in sub-clause (i), for item (B), the following item shall be substituted, namely :—

“(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or”;

(b) in sub-clause (ii), for item (B), the following item shall be substituted, namely :—

“(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India.”.

Amendment
of Section 6.

5. In Section 6 of the principal Act, in sub-section (2),—

(a) for the words “may, at his or its option,”, the word “shall” shall be substituted;

(b) for the words “seven days”, the words “thirty days” shall be substituted;

(c) after sub-section (2), the following sub-section shall be inserted, namely :—

“(2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under Section 31, whichever is earlier.”.

Substitution
of new
section for
Section 8.

Composition
of Commis-
sion.

6. For Section 8 of the principal Act, the following section shall be substituted, namely :—

“8. (1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.

(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

(3) The Chairperson and other Members shall be whole-time Members.”.

Substitution
of new
section for
Section 9.

Selection
Committee
for Chair-
person and
Members of
Commission.

7. For Section 9 of the principal Act, the following section shall be substituted, namely :—

“9. (1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

(a) the Chief Justice of India or his nomineeChairperson;

(b) the Secretary in the Ministry of Corporate Affairs ..Member;

(c) the Secretary in the Ministry of Law and JusticeMember;

(d) two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.....Members.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.”.

Amendment of Section 10. **8. In Section 10 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—**

“Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.”.

Amendment of Section 12. **9. In Section 12 of the principal Act, for the words “one year”, the words “two years” shall be substituted.**

Substitution of new section for Section 13. **10. For Section 13 of the principal Act, the following section shall be substituted, namely:—**

Administrative powers of Chairperson. **“13. The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:**

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.”.

Amendment of Section 16. **11. In Section 16 of the principal Act, —**

(a) for sub-section (1), the following sub-sections shall be substituted, namely: —

“(1) The Central Government may, by notification, appoint a Director-General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

(1A) The number of other Additional, Joint, Deputy or Assistant Directors-General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors-General or such officers or other employees shall be such as may be prescribed.”;

(b) in sub-section (2), for the words “such other advisers, consultants and officers,”, the words “such officers or other employees,” shall be substituted;

(c) in sub-sections (3) and (4), for the words “such other advisers, consultants or officers,”, the words “such officers or other employees,” shall be substituted.

Substitution
of new
section for
Section 17.

Appointment
of Secre-
tary,
experts,
profes-
sionals and
officers and
other
employees
of Commis-
sion.

Amendment
of Section
19.

Amendment
of Section
20.

Amendment
of Section
21.

Insertion of
new Section
21A.

Reference
by Commis-
sion.

12. For Section 17 of the principal Act, the following section shall be substituted, namely: —

“17. (1) The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(2) The salaries and allowances payable to and other terms and conditions of service of the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.

(3) The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.”.

13. In Section 19 of the principal Act, in sub-section (1), in clause (a), for the words “receipt of a complaint,”, the words “receipt of any information, in such manner and” shall be substituted.

14. In Section 20 of the principal Act, in sub-section (2), the words, brackets and figures “or upon receipt of a reference under sub-section (1) of Section 21” shall be omitted.

15. In Section 21 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that any statutory authority, may, *suo motu*, make such a reference to the Commission.”;

(b) for sub-section (2), the following sub-section shall be substituted, namely: —

“(2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.”.

16. After Section 21 of the principal Act, the following section shall be inserted, namely :—

“21A. (1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

Provided that the Commission, may, *suo motu*, make such a reference to the statutory authority.

(2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.”.

Substitution of new section for Section 22.

17. For Section 22 of the principal Act, the following section shall be substituted, namely :—

Meetings of Commission.

“22. (1) The Commission shall meet at such times and such places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations.

(2) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote:

Provided that the quorum for such meeting shall be three Members.”.

Omission of Sections 23, 24 and 25.

18. Sections 23, 24 and 25 of the principal Act shall be omitted.

Substitution of new section for Section 26.

19. For Section 26 of the principal Act, the following section shall be substituted, namely :—

Procedure for inquiry under Section 19.

“26. (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under Section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under Section 19, the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3) The Director-General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in sub-section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on a reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director-General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director-General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director-General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director-General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.”.

20. In Section 27 of the principal Act,—

(i) in clause (b) for the proviso, the following proviso shall be substituted, namely:—

“Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.”;

(ii) clauses (c) and (f) shall be omitted;

(iii) in clause (g), for the word "order", the words "order or issue such directions" shall be substituted;

(iv) after clause (g), the following proviso shall be inserted, namely :—

"Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to Section 3 or Section 4 of the Act is a member of a group as defined in clause (b) of the *Explanation* to Section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.".

Amendment
of Section
28.

21. In Section 28 of the principal Act,—

(a) in sub-section (1), for the words, brackets, letter and figures "Central Government, on recommendation under clause (f) of Section 27", the word "Commission" shall be substituted;

(b) clause (d) of sub-section (2) shall be omitted.

Amendment
of Section
29.

22. In Section 29 of the principal Act,—

(a) in sub-section (1), after the words "Where the Commission is of the", the words "*prima facie*" shall be inserted;

(b) after sub-section (1), the following sub-section shall be inserted, namely :—

"(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director-General and such report shall be submitted by the Director-General within such time as the Commission may direct.";

(c) in sub-section (2), after the words "parties to the combination", the words, brackets, figure and letter "or the receipt of the report from Director-General called under sub-section (1A), whichever is later" shall be inserted.

Substitution
of new
section for
Section 30.

Procedure in
case of
notice under
sub-section
(2) of
Section 6.

23. For Section 30 of the principal Act, the following section shall be substituted, namely:—

"30. Where any person or enterprise has given a notice under sub-section (2) of Section 6, the Commission shall examine such notice and form its *prima facie* opinion as provided in sub-section (1) of Section 29 and proceed as per provisions contained in that section.".

Amendment
of Section
31.

24. In Section 31 of the principal Act, in sub-section (11),—

(a) for the words, brackets and figures “ninety working days from the date of publication referred to in sub-section (2) of Section 29”, the words, brackets and figures “two hundred and ten days from the date of notice given to the Commission under sub-section (2) of Section 6” shall be substituted;

(b) in the *Explanation*, for the words “ninety working”, the words “two hundred and ten” shall be substituted.

Amendment
of Section
32.

25. In Section 32 of the principal Act, after clause (f), —

(a) after the words “have power to inquire”, the words and figures “in accordance with the provisions contained in Sections 19, 20, 26, 29 and 30 of the Act” shall be inserted;

(b) after the words “relevant market in India”, occurring at the end, the words “and pass such orders as it may deem fit in accordance with the provisions of this Act” shall be inserted.

Substitution
of new
section for
Section 33.

26. For Section 33 of the principal Act, the following section shall be substituted, namely: —

Power to
issue interim
orders.

“33. Where during an inquiry, the Commission is satisfied that an Act in contravention of sub-section (1) of Section 3 or sub-section (1) of Section 4 or Section 6 has been committed and continues to be committed or that such Act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such Act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.”.

Omission of
Section 34.

27. Section 34 of the principal Act shall be omitted.

Amendment
of Section
35.

28. In Section 35 of the principal Act, for the words “complainant or defendant”, the words “person or an enterprise” shall be substituted.

Substitution
of new
section for
Section 36.

Power of
Commission
to regulate
its own
procedure.

29. For Section 36 of the principal Act, the following section shall be substituted, namely: —

“36. (1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect ⁵ of 1908. of the following matters, namely : —

(a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning, subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, any public record or ¹ of 1872. document or copy of such record or document from any office.

(3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry by it.

(4) The Commission may direct any person —

- (a) to produce before the Director-General or the Secretary or an officer authorised by it, such books or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;
- (b) to furnish to the Director-General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person as may be required for the purposes of this Act.”.

Omission of
Section 37.

30. Section 37 of the principal Act shall be omitted.

Substitution
of new
Section for
Section 39.

Execution of
orders of
Commission
imposing
monetary
penalty.

31. For Section 39 of the principal Act, the following section shall be substituted, namely: —

“39. (1) If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty in such manner as may be specified by the regulations.

(2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income tax Act, 1961, it may make a reference⁴³ of 1961. to this effect to the concerned income tax authority under that Act for recovery of the penalty as tax due under the said Act.

(3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income tax Act, 1961 and the provisions contained in Sections 221 to 43 of 1961. 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made thereunder shall, in so far as may be, apply

as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income Tax and sums imposed by way of penalty, fine and interest under the Income Tax Act, 1961 and to the Commission instead of the Assessing Officer.

Explanation 1.—Any reference to sub-section (2) or sub-section (6) of Section 220 of the Income Tax Act, 1961, in the said provisions of 43 of 1961. that Act or the rules made thereunder shall be construed as references to Sections 43 to 45 of this Act.

Explanation 2.— The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income Tax Act, 1961 shall be deemed 43 of 1961. to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

Explanation 3.—Any reference to appeal in Chapter XVIID and the Second Schedule to the Income Tax Act, 1961, shall be construed as a 43 of 1961. reference to appeal before the Competition Appellate Tribunal under Section 53B of this Act.”.

Omission of
Section 40.

32. Section 40 of the principal Act shall be omitted.

Amendment
of Section
41.

33. In Section 41 of the principal Act, the following *Explanation* shall be inserted, namely :—

‘*Explanation.*— For the purposes of this section,—

(a) the words “the Central Government” under Section 240 of the Companies Act, 1956 shall be construed as “the 1 of 1956. Commission”;

(b) the word “Magistrate” under Section 240A of the Companies Act, 1956 shall be construed as “the Chief Metropolitan 1 of 1956. Magistrate, Delhi”.’.

Substitution
of new
section for
Section 42.
Contraven-
tion of
orders of
Commission.

34. For Section 42 of the principal Act, the following section shall be substituted, namely: —

“42. (1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

(2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under Sections 27,28,31,32,33,42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under Section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.”.

Insertion of
new Section
42A.

35. After Section 42 of the principal Act, the following section shall be inserted, namely:—

Compensa-
tion in case
of contra-
vention of
orders of
Commission.

“42A. Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under Sections 27,28,31,32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.”.

Substitution
of new
Section for
Section 43.

36. For Section 43 of the principal Act, the following section shall be substituted, namely :—

Penalty for
failure to
comply with
directions of
Commission
and Director-
General.

“43. If any person fails to comply, without reasonable cause, with a direction given by —

(a) the Commission under sub-sections (2) and (4) of Section 36; or

(b) the Director-General while exercising powers referred to in sub-section (2) of Section 41,

such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.”.

Insertion of
new Section
43A.

37. After Section 43 of the principal Act, the following section shall be inserted, namely:—

Power to
impose
penalty for
non-
furnishing of
information
on combina-
tions.

“43A. If any person or enterprise who fails to give notice to the Commission under sub-section (2) of Section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one per cent of the total turnover or the assets, whichever is higher, of such a combination.”.

Amendment
of Section
45.

38. In Section 45 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Without prejudice to the provisions of Section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(b) omits to state any material fact knowing it to be material; or

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.”.

Amendment
of Section
46.

39. In Section 46 of the principal Act, —

(a) for the first proviso, the following proviso shall be substituted, namely :—

“Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under Section 26 has been received before making of such disclosure.”;

(b) in the second proviso, for the word “first”, the word “has” shall be substituted;

(c) after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission.”.

Amendment
of Section
49.

40. In Section 49 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) The Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.”;

(b) in sub-section (2), after the words "Central Government", the words "or the State Government, as the case may be," shall be inserted;

(c) in sub-section (3), the words "as may be prescribed," shall be omitted.

Amendment
of Section
51.

41. In Section 51 of the principal Act, in sub-section (1),—

(i) clause (b) shall be omitted;

(ii) in clause (d), for the words, brackets and letters "clauses (a) to (c)", the words, brackets and letters "clauses (a) and (c)" shall be substituted.

Amendment
of Section
52.

42. In Section 52 of the principal Act, in sub-section (2), in the *Explanation*, for the words "Supreme Court", the words "Appellate Tribunal or the Supreme Court" shall be substituted.

Insertion of
new Chapter
VIII-A.

43. After Chapter VIII of the principal Act, the following Chapter shall be inserted, namely :—

'CHAPTER VIII-A

COMPETITION APPELLATE TRIBUNAL

Establish-
ment of
Appellate
Tribunal.

53A. (1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal,—

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of Section 26, Section 27, Section 28, Section 31, Section 32, Section 33, Section 38, Section 39, Section 43, Section 43A, Section 44, Section 45 or Section 46 of this Act;

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under Section 42A or under sub-section (2) of Section 53-Q of this Act, and pass orders for the recovery of compensation under Section 53N of this Act.

(2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.

Appeal to
Appellate
Tribunal.

53B. (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of Section 53A may prefer an appeal to the Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

53C. The Appellate Tribunal shall consist of a Chairperson and not more than two other Members to be appointed by the Central Government.

53D. (1) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, competition matters, including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

53E. (1) The Chairperson and Members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

- (a) the Chief Justice of India or his nomineeChairperson;
- (b) the Secretary in the Ministry of Corporate Affairs ...Member;
- (c) the Secretary in the Ministry of Law and JusticeMember.

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

53F. The Chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment :

Composition of Appellate Tribunal.

Qualifications for appointment of Chairperson and Members of Appellate Tribunal.

Selection Committee.

Term of office of Chairperson and Members of Appellate Tribunal.

Provided that no Chairperson or other Member of the Appellate Tribunal shall hold office as such after he has attained,—

- (a) in the case of the Chairperson, the age of sixty-eight years;
- (b) in the case of any other Member of the Appellate Tribunal, the age of sixty-five years.

Terms and conditions of service of Chairperson and Members of Appellate Tribunal.

53G. (1) The salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed.

(2) The salaries, allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment.

Vacancies.

53H. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation of Chairperson and Members of Appellate Tribunal.

53 I. The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office :

Provided that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Member of Appellate Tribunal to act as its Chairperson in certain cases.

53J. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death or resignation, the senior most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member or, as the case may be, such one of the Members of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Removal and suspension of Chairperson and Members of Appellate Tribunal.

53K. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other Member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

(b) has engaged at anytime, during his term of office, in any paid employment; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has become physically or mentally incapable of acting as such Chairperson or other Member of the Appellate Tribunal; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or

(f) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no Chairperson or a Member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (1) except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases.

53L. The Chairperson and other Members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act :

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company as defined in Section 617 of the Companies Act, 1956.

1 of 1956.

Staff of Appellate Tribunal.

53M. (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

Awarding compensation.

53N. (1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under Section 42A or under sub-section (2) of Section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by the enterprise.

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.

(3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise :

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

(4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of Rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

Explanation.— For the removal of doubts, it is hereby declared that—

(a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section (1) of Section 53A of the Act, has determined in a proceeding before

it that violation of the provisions of the Act has taken place, or if provisions of Section 42A or sub-section (2) of Section 53Q of the Act are attracted.

(b) enquiry to be conducted under sub-section (3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place.

53O. (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*;

(i) any other matter which may be prescribed.

(3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code 45 of 1860. and the Appellate Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Execution of
orders of
Appellate
Tribunal.

53 P. (1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the Court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Contraven-
tion of
orders of
Appellate
Tribunal.

53Q. (1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit :

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence punishable under this sub-section, save on a complaint made by an officer authorised by the Appellate Tribunal.

(2) Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise contravening, without any reasonable ground, any order of the Appellate Tribunal or delaying in carrying out such orders of the Appellate Tribunal.

Vacancy in
Appellate
Tribunal not
to invalidate
acts or
proceedings.

53R. No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the Constitution of the Appellate Tribunal.

Right to legal
representa-
tion.

53S.(1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

(2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

(3) The Commission may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Explanation.— The expressions “chartered accountant” or “company secretary” or “cost accountant” or “legal practitioner” shall have the meanings respectively assigned to them in the Explanation to Section 35.

Appeal to Supreme Court.

53T. The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them :

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

Power to Punish for contempt.

53U. The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to modifications ^{70 of 1971.} that, —

(a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(b) the references to the Advocate-General in Section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification, specify in this behalf.

Amendment of Section 57.

44. In Section 57 of the principal Act, for the words “the Commission”, the words “the Commission or the Appellate Tribunal” shall be substituted.

Substitution of new Section for Section 58.

45. For Section 58 of the principal Act, the following section shall be substituted, namely:—

Chairperson, Members, Director-General, Secretary, officers and other employees, etc., to be public servants.

“58. The Chairperson and other Members and the Director-General, Additional, Joint, Deputy or Assistant Directors-General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code.”.

^{45 of 1860.}

Amendment
of Section
59.

46. In Section 59 of the principal Act, for the words “the Registrar or officers or other employees of the Commission”, the words “the Secretary or officers or other employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal” shall be substituted.

Amendment
of Section
61.

47. In Section 61 of the principal Act, for the word “Commission”, the words “Commission or the Appellate Tribunal” shall be substituted.

Amendment
of Section
63.

48. In Section 63 of the principal Act, in sub-section (2), —

(i) for clause (a); the following clause shall be substituted, namely :—

“(a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of Section 9;”;

(ii) clause (c) shall be omitted;

(iii) after clause (d), the following clause shall be inserted, namely :—

“(da) the number of Additional, Joint, Deputy or Assistant Directors-General or such officers or other employees in the office of Director-General and the manner in which such Additional, Joint, Deputy or Assistant Directors-General or such officers or other employees may be appointed under sub-section (1A) of Section 16;”;

(iv) in clauses (e) and (f), for the words “such other advisers, consultants or officers”, the words “such officers or other employees” shall be substituted;

(v) in clause (g), for the word “Registrar”, the word “Secretary” shall be substituted;

(vi) clauses (h), (i) and (j) shall be omitted;

(vii) after clause (m), the following clauses shall be inserted, namely :—

“(ma) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of Section 53B and the fees payable in respect of such appeal;

(mb) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of Section 53E;

(mc) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of Section 53G;

(md) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of Section 53M;

(me) the fee which shall be accompanied with every application made under sub-section (2) of Section 53N;

(mf) the other matters under clause (i) of sub-section (2) of Section 53O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 while trying 5 of 1908. a suit;";

(viii) for clause (n), the following clause shall be substituted, namely:—

"(n) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section (2) of Section 66.".

49. In Section 64 of the principal Act, in sub-section (2), for clauses (d) and (e), the following clauses shall be substituted, namely:—

"(d) the procedures to be followed for engaging the experts and professionals under sub-section (3) of Section 17;

(e) the fee which may be determined under clause (a) of sub-section (1) of Section 19;

(f) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of Section 22;

(g) the manner in which penalty shall be recovered under sub-section (1) of Section 39;

(h) any other matter in respect of which provision is to be, or may be, made by regulations.".

50. In Section 66 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

(1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of Section 5 of the said Act (hereafter referred to as the repealed Act) shall stand dissolved : 54 of 1969.

Provided that, notwithstanding anything contained in this sub-section, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of Section 5 of the repealed Act may continue to exercise jurisdiction and power under the repealed Act for a period of two years from the date of the commencement of this Act in respect of all cases or proceedings (including complaints received by it or references or applications made to it) filed before the commencement

of this Act as if the Monopolies and Restrictive Trade Practices Act, 1969⁵⁴ of 1969 had not been repealed and all the provisions of the said Act so repealed shall *mutatis mutandis* apply to such cases or proceedings or complaints or references or applications and to all other matters.

Explanation.—For the removal of doubts, it is hereby declared that nothing in this proviso shall confer any jurisdiction or power upon the Monopolies and Restrictive Trade Practices Commission to decide or adjudicate any case or proceeding arising under the Monopolies and Restrictive Trade Practices Act, 1969 on or after the commencement of 54 of 1969. this Act.

(1A) The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 shall, however, not affect,—

54 of 1969.

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.”.

(b) in sub-section (2), —

(i) for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that the Director-General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors-General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate Tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are

duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be;";

(ii) in the third proviso, for the words "the Central Government", the words "the Competition Commission of India or the Appellate Tribunal, as the case may be," shall be substituted;

(iii) in the fourth proviso,—

(A) for the words "the Central Government shall, out of the monies standing", the words "the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing" shall be substituted;

(B) for the portion beginning with the words "the Central Government and such monies" and ending with the words "as may be prescribed" the following shall be substituted, namely:—

"the Competition Commission of India or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the said Commission or the Tribunal, as the case may be, in such manner as may be prescribed";

(c) for sub-section (3), the following sub-section shall be substituted, namely :—

"(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such cases, in which any unfair trade practice has also been alleged), before the Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.".

(d) in sub-section (4), for the words "on or before the commencement of this Act shall, on such commencement", the words, brackets and figure "on or before the expiry of two years referred to in the proviso to sub-section (1)," shall be substituted;

(e) for sub-section (5), the following sub-section shall be substituted, namely :—

"(5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the 54 of 1969. Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.".

Assented to on the 24th September 2007

THE MERCHANT SHIPPING (AMENDMENT) ACT, 2007

(ACT No. 40 OF 2007)

An Act further to amend the Merchant Shipping Act, 1958 and the Indian Ports Act, 1908

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows—

CHAPTER I

PRELIMINARY

Short title & Commencement. 1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2007.

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENT OF THE MERCHANT SHIPPING ACT, 1958

Amendment of long title. 2. In the Merchant Shipping Act, 1958 (hereinafter referred to as the 44 of 1958. principal Act), in the long title, for the word “registration”, the words “registration, certification, safety and security” shall be substituted.

Amendment of Section 3. 3. In Section 3 of the principal Act, after clause (44), the following clause shall be inserted, namely:—

‘(44A) “security” means maritime security and includes any measure to protect ports or ships or any person or thing relating directly or indirectly to maritime navigation,—

(i) against terrorism, sabotage, stowaways, illegal migrants, asylum seekers, piracy, armed robbery, seizure or pilferage; and

(ii) against any other hostile act or influence which threatens the security in the maritime transport sector,

employed by the owners or operators or persons in charge of the vessels or management of port facilities, offshore installations and other marine organisations or establishments;’.

Amendment of Section 31. 4. In Section 31 of the principal Act, after clause (a), the following clause shall be inserted, namely:—

“(aa) the ship identification number;”.

Insertion of
new Section
99-A.

Prohibition of
engagement
of seafarer
without
seafarer's
identity
document.

5. After Section 99 of the principal Act, the following section shall be inserted, namely :—

‘99A. (1) No person shall engage or carry to sea any seafarer in any ship, unless the seafarer is in possession of seafarer's identity document.

(2) The seafarer's identity document under sub-section (1) shall be issued in such form and manner and on payment of such fees as may be prescribed.

Explanation.—For the purposes of this section, “seafarer” means any person who is employed or engaged or works in any capacity on board a sea going ship ordinarily engaged in maritime navigation, other than a ship of war.’.

Insertion of
new Part
IXB.

6. After Part IXA of the principal Act, the following Part shall be inserted, namely :—

‘PART IXB

SECURITY OF SHIPS AND PORT FACILITIES

Application.

344J. (1) Subject to sub-section (2), this Part shall apply to—

(a) the following types of ships engaged on international voyages, namely:—

(i) passenger ships including high speed passenger craft;

(ii) cargo ships including high speed craft of five hundred gross tonnage and above;

(iii) mobile offshore drilling units:

Provided that the Central Government may extend the application of this Part to those ships which are exclusively engaged on coastal voyages;

(b) the port facilities serving ships referred to in clause (a) :

Provided that the Central Government may, after taking decision, on the basis of port facility security assessment having carried out under this Part, extend the application of this Part to those port facilities which, although used primarily by ships not engaged on international voyages, are occasionally required, to serve ships arriving or departing on international voyages.

(2) This Part shall not apply to war ships, naval auxiliaries, or other ships owned or operated by the Central Government and used only for non-commercial service by that Government.

Definitions.

344K. In this Part, unless the context otherwise requires,—

(a) “company” means the owner of the ship who, or any organisation which has assumed the responsibility of operation of the

ship from the owner of such ship and who or which has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

(b) "declaration of security" means an agreement between ships or a ship and a port facility specifying therein the security measures to be complied with;

(c) "designated authority" means such authority as the Central Government may, by notification in the official Gazette, specify;

(d) "International Ship and Port Facility Security Code" means the Code for the security of ships and port facilities provided in the Safety Convention;

(e) "port facility" means any location or area including anchorages or waiting berths or approaches from seaward and determined by the Central Government or the designated authority, as the case may be, where interface between ships or a ship and a port takes place;

(f) "recognised security organisation" means any organisation, company, firm or body of individuals having expertise in matters relating to security and knowledge of ship, and port operations, which or who are authorised by the Central Government by notification in the official Gazette, to carry out assessment or verification or approval or certification required by this Part or by the International Ship and Port Facility Code;

(g) "security level" means the qualification of the degree of risk associated with the threat or an unlawful act against a ship, or against a port facility or any other area connected therewith;

(h) words and expressions used in this Part but not defined in this Part shall have the respective meanings as assigned to them in the Safety Convention.

Ship identification number.

344L. (1) The Central Government or the designated authority, as the case may be, shall provide every Indian ship of one hundred gross tonnage and above and every Indian cargo ship of three hundred gross tonnage and above, a ship identification number, which conforms to the relevant scheme formulated by the International Maritime Organisation.

(2) All the certificates issued under this Act and all certified copies thereof shall bear the ship identification number.

Security measures.

344M. (1) The Central Government or the designated authority, as the case may be, shall set security levels taking into consideration human element such as shore leave and provide information thereof to all the Indian ships, as may be prescribed.

(2) The Central Government or the designated authority, as the case may be, shall set security levels and provide information thereof to port facilities within India and to every ship prior to entering an Indian port or while in a port within India, as may be prescribed :

Provided that the Central Government may authorise any recognised security organisation to carry out any of the security measures under this section, on behalf of it, with such conditions as may be prescribed.

Port facility assessment. 344N. The Central Government shall carry out port facility assessment in the manner as may be prescribed.

Obligations of companies, etc. 344O. Every company, ship or port facility shall comply with the relevant requirements under the Safety Convention and the International Code for the Security of Ships and Port Facility.

Obligations of port facility. 344P. Every port facility in India shall comply with the requirement of this Part or the rules made thereunder.

International Ship Security Certificate. 344Q. The Central Government or the designated authority or the authorised person, as the case may be, shall issue every Indian ship to which this Part applies, an International Ship Security Certificate or an Interim International Ship Security Certificate, as the case may be, in the form and manner as may be prescribed.

Ship Security Alert System. 344R. Every Indian ship shall be provided with such Ship Security Alert System, as may be prescribed.

Control measures. 344S. Every ship to which this Part applies shall be subject to such control measures as may be prescribed.

Power to make rules. 344T. (1) The Central Government may, having regard to the provisions of the Safety Convention, make rules to carry out the purposes of this Part.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such rules may provide—

(a) for alternative or equivalent security levels;

(b) fee to be levied for any service rendered;

(c) any other matter which by this Part is to be, or may be, prescribed.'

CHAPTER III

AMENDMENT OF THE INDIAN PORTS ACT, 1908

Insertion of new Section 68D of Act 15 of 1908. 7. After Section 68C of the Indian Ports Act, 1908, the following Section shall be inserted, namely:—

Maritime security. '68D. A port facility in India shall comply with all the requirements contained in Chapter IXB of the Merchant Shipping Act, 1958 or the rules ^{44 of 1958.} made thereunder so far as they are not inconsistent with the provisions of this Act.

Explanation.—For the purposes of this section, the expression "port facility" shall have the same meaning as assigned to it in Part IXB of the Merchant Shipping Act, 1958.'

^{44 of 1958.}